

UNITED STATES
v.
EDWARD J. CONNOLLY, JR.
IDAHO FISH AND GAME DEPARTMENT, (Intervenor)

IBLA 77-362

Decided March 15, 1979

Appeal from decision of Administrative Law Judge John R. Rampton, Jr. (Idaho ML 872-875) denying permission to conduct placer mining operations on a group of claims located on land withdrawn for a power site.

Affirmed.

1. Mining Claims: Power Site Lands–Mining Claims: Surface Uses–Mining Claims Rights Restoration Act–Withdrawals and Reservations: Power Sites

Where a mining claim has been located pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1970), on land withdrawn for a power site, it is proper to prohibit placer mining if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and the recovery of archaeological values.

2. Act of December 31, 1970–Mines and Mining–Mining Claims: Power Site Lands–Mining Claims: Surface Uses–Mining Claims Right Restoration Act–Withdrawals and Reservations: Power Sites

The Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), does not require the granting of permission for placer mining operations on land within a power site withdrawal where such operations would probably interfere with other uses of the land.

APPEARANCES: Edward J. Connolly, Jr., pro se; Robert S. Burr, Esq., Office of the Solicitor, Boise, Idaho, for the United States; T. J. Jones III, Esq., Idaho Department of Fish and Game, Boise, Idaho, for the Intervenor.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Edward J. Connolly, Jr., has appealed from the decision by Administrative Law Judge John R. Rampton, Jr., dated April 27, 1977, denying permission to conduct placer mining operations on the Connolly Placer Mining Claims Nos. 101-104, because such operations would substantially interfere with the recreational and archaeological uses of the land. The claims, located by appellant in 1974, lie along the Snake River, 12 to 15 miles downstream from the American Falls Dam in Idaho on land withdrawn for power purposes by Power Site Reserve No. 117.

[1] The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-25 (1970), authorizes the location and patent of mining claims on public lands withdrawn for power purposes. However, the Department may hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land and may issue an order providing for one of the following three alternatives: (1) a complete prohibition on placer mining; (2) permission to engage in placer mining upon the condition that the locator shall restore the surface of the claim; or (3) a general permission to engage in placer mining. If placer mining operations are to be allowed, no restriction may be placed on the manner of conducting operations beyond the requirement of surface restoration. Thus, our decision in this case cannot be predicated on the assumption that mining operations will be limited in any way. United States v. Bennewitz, 72 I.D. 183 (1965). ^{1/} Placer mining may be properly prohibited if there is a likelihood of substantial interference with the use of the land for fishing, hunting, recreation, and archaeological values. See generally, Boyd McGinn, 25 IBLA 188, 190-91 (1976).

^{1/} In United States v. Bennewitz, supra at 188, the Deputy Solicitor explained the limited choices before the Department as follows:

"The statute permits the Secretary to act only once. He cannot issue an order now allowing unrestricted mining on the basis of a one or two dredge operation and then, if additional dredges are added or larger ones are substituted or a totally different type of operation is adopted, issue an order prohibiting mining. He can act only once, either to permit or prohibit. Because his course of action is so limited, to avoid defeating the purpose of the act, he should be able to base his decision not only on what the claimant proposes to do but also on what the claimant or his successor may be able to do in the way of placer mining."

Appellant seeks to develop the claims for the flour gold which he claims is present. ^{2/} Even though these fine particles of gold have eluded profitable exploitation in the past, appellant claims that they may be commercially recovered by means of a cyanide heap leaching process. Gold bearing material from the claims would be heaped on an impermeable pad and a cyanide solution would be sprinkled or dripped from hoses over the heap. The solution would dissolve the gold as it worked its way through the heap. The solution would be drained from the pad as it accumulated, the gold chemically removed through the use of activated charcoal, and the solution recycled to the sprinklers. Possible leaks would be monitored, and emergency catch basins below the pad would prevent any surface leaks or ruptures from releasing solutions to contaminate the river. As the toxicity of the cyanide solution varies with its acidity, the toxicity can be neutralized by adding chlorine. Also, appellant claims that the cyanide breaks down quickly into relatively non-toxic chemicals, so that an accidental spillage would not have a long-term effect. ^{3/}

Appellant asserts that Judge Rampton's decision is not in accordance with the evidence taken at the hearing. However, after reviewing the evidence, we reached the same conclusion as Judge Rampton. The testimony establishes that the site of the claims has a district-wide significance as a recreation site which is used for hunting and fishing, that there may be significant archaeological remains on the site, ^{4/} and that the proposed placer mining would substantially interfere with these uses.

[2] Appellant also contends that the prohibition of placer mining is not consistent with the Mining and Minerals Policy Act of 1970,

^{2/} Assays introduced by appellant (Exh. 12) show only trace amounts of gold, a result appellant claims to be consistent with the fact that it exists in fine particles.

^{3/} In Edward J. Connolly, Jr., 34 IBLA 233 (1978), we affirmed the rejection of a petition by the same appellant to open land within a reclamation withdrawal to mineral location. In that case the land at issue was again along the Snake River but several miles downstream from the claims we are concerned with here. Appellant had proposed a cyanide heap leaching process for the recovery of flour gold. Although the Act of April 23, 1932, 43 U.S.C. § 154 (1970), allows the Department to tailor restrictions on mining operations within reclamation withdrawals, the Board ruled that opening the land to the location of mining claims was not in the public interest.

^{4/} Where it appears likely that significant archaeological remains may be found in land within a powersite withdrawal, it is appropriate to consider the recovery of those values as another use of the land in deciding whether or not to permit placer mining operations. See 43 U.S.C. § 469 et seq. (Supp. IV, 1974); for a general discussion of that statute, see Cecil A. Walker, 26 IBLA 71 (1976).

30 U.S.C. § 21a (1976), which establishes a policy to encourage the development of a sound mining industry. However, that statute does not require approval of placer mining operations in this case. The Act effected no change in the Department's authority and purpose conferred by other legislation. The Mining Claims Rights Restoration Act, supra, itself requires the Board to consider land use values other than mining, and this statute was not affected by the Mining and Minerals Policy Act. Furthermore, the Mining and Minerals Policy Act is only one of many expressions of policy which guide this Department's actions. Others include the National Environmental Policy Act, 43 U.S.C. § 4321, et seq. (1970), and the Federal Land Policy and Management Act, 43 U.S.C.A. § 1701 et seq. (West Supp. 1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

